MULTIMEDIA UNIVERSITY

STUDENT IDENTIFICATION NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2016/2017 SESSION

UJP 3612 - JURISPRUDENCE I

(All sections / Groups)

8TH OCTOBER 2016

Reading Time: 9.00 a.m. – 9.15 a.m.
(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages. It has two Parts: Part A and Part B. **Question One in Part A is COMPULSORY. There are three Questions in Part B. Answer Only TWO Questions from Part B.** The distribution of marks for each question and sub-question is given.

3. Students are not allowed to bring any Statute into the Examination Hall.

4. Please write all your answers in the Answer Booklet provided.

PART A. THIS QUESTION MUST BE ANSWERED

QUESTION 1

Briefly define (if necessary, compare and contrast) the following terms:

(a) One critique (only) by Ronald Dworkin of the rule of recognition concept by H.L. A. Hart and one critique (only) by H.L. A. Hart of the concept of Command theory of law of John Austin (14 marks)

(b) 'Consensual morality' of Lord Patrick Devlin and 'Amalgamation of moralities' of H. L. A Hart.

(13 marks)

(c) 'Economics as basic structure' and 'law as super structure' concept in Karl Marx's legal theory.

(13 marks)

(Total 40 marks)

Continued ...

PART B: ANSWER ONLY TWO QUESTIONS FROM THIS PART

QUESTION 2

Jeremy Bentham's 'greatest happiness of the greatest number' is his main criteria for 'testing' the validity and usefulness of legislation.

John Rawls' concept of 'original actors' acting under the 'veil of ignorance' is the method in which John Rawls tried to formulae principles which should govern a just society.

Jeremy Bentham's theory is about 'ideal' or the types of legislation which he thought is the best for a society. John Rawls' theory which he developed about 150 years after Bentham is about trying to lay down guidelines which could minimize or at least reduce social injustices within a society.

Briefly explain:

(a) the meaning of (i) 'greatest happiness of the greatest number', (ii) 'original actors' and (iii) 'veil of ignorance' in the above sentences.

(15 marks)

(b) Do you agree with the above statement or not? Give brief reasons with analytical comments in your answer.

(6 marks)

(c) Between Bentham's and Rawls' concepts which in your opinion is more persuasive and have more applicability in enhancing your understanding of jurisprudential issues. Give analytical comments and reasons in your answer.

(9 marks)

(Total 30 marks)

Continued ...

QUESTION 3

In the case of Riggs v Palmer 115 N.Y. 506 (1889) the New *York State Court of Appeals decided that a murderer who killed the testator cannot inherit the testator's poperty even if he is the main beneficiary under the testators' will. According to Professor Ronald Dworkin one way of analyzing the decision of the court is from the view point of rules and principles.*

(a) What is the main rule and the main principle that, according to Ronald Dworkin are applicable in the case? **Briefly** elaborate your answer.

(10 marks)

Almost a century after the Riggs was decided, in *the case of* McLoughlin v O'Brian, [1983] 1 AC 410, a primarily tort law case *the judicial committee of House of Lords of the United Kingdom decided that policies can be taken into consideration only in 'serious' cases. The House of Lords further held that policy considerations in the* McLoughlin *case were not serious enough to overcome the right of Mrs McLoughlin to claim and obtain damages for nervous shock in relation to the accident involving her husband and children*

(b) **Briefly** explain what the policy considerations in the *McLoughlin* case and what does the phase 'policy' means in the context of the *McLoughlin* case, **according to Professor Ronald Dworkin's analysis of those terms,**

(8 marks)

(c) As a student of jurisprudence studying various legal theories which **one** case for you is more educative. Specifically analyze and comment on how jurisprudential theories you learn from **one** of the cases enhance your understanding of the decision of the case .

(12 marks)

(Total: 30 marks)

Continued ...

QUESTION 4

The relationship between law and morality was the main focus of the debate between Professors H. L. A. Hart and Lon Fuller in the 1958 *Harvard Law Review* articles.

Whether morals should be enforced by legislation or not is the debate between H. L. A. Hart and Lord Patrick Devlin which also started in the late 1950s after publication of *The Wolfenden Report*. The report recommended that homosexual offences in the United Kingdom between consenting adults in private be decriminalized -- a recommendation with which Lord Devlin disagreed.

In the different contexts of the debates briefly explain:

(a) whether immoral law --as in grossly unjust or oppressive laws-- should be considered as valid laws or not which was the debate between Hart and Fuller. After a brief explanation specifically comment on whose stand point (Hart **or** Fuller) you agree more with and why.

(10 marks)

(b) that enforcement of morals by legislation (Devlin's view) is not the same concept as laws being considered as invalid because they are grossly unfair and oppressive, immoral and therefore invalid. (Fuller's view). Distinguish between what Devlin means regarding 'enforcement of morals' and Fuller's immoral laws as invalid laws with some illustrations and examples.

(10 marks)

(c) among the two ideas as proposed by Fuller and Devlin in different contexts with whose view you (choose **either** Fuller **or** Devlin) agree more (or disagree less) and why? Briefly explain your answers.

(10 marks)

(Total 30 marks)

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